

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**JUANITA DAWSON, AND LILLIE
DAWSON,**

Plaintiffs,

v.

**SUMEER HOMES, et al.,
Defendants.**

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**3:06-CV-1356-D
ECF**

**FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to the provisions of 28 U.S.C. § 636(b), and an order of the District Court in implementation thereof, this case has been referred to the United States Magistrate Judge. The findings, conclusions and recommendation of the Magistrate Judge, as evidenced by his signature thereto, are as follows:

FINDINGS AND CONCLUSIONS:

Type of Case: This is an unspecified civil action.

Parties: Plaintiffs, Juanita and Lillie Dawson, are residents of Arlington, Texas.

Defendants are Sumeer Homes and Suresh Shridharani. No process has been issued in this case.

Statement of Case: On July 27, 2006, Plaintiffs filed the complaint in this action along with motions to proceed *in forma pauperis* and for appointment of counsel. All pleadings are signed by Jaunita Dawson. On August 11, 2006, the Magistrate Judge issued two orders informing Plaintiffs that the complaint was not in compliance with Federal Rule of Civil Procedure 8(a), that Juanita Dawson, a *pro se* litigant, could not represent Lillie Dawson in this civil action, that Lillie Dawson had neither paid the filing fee nor submitted a motion for leave to

proceed *in forma pauperis*, and that Juanita Dawson's *in forma pauperis* motion was insufficient. The orders required Plaintiffs to file an amended complaint in compliance with Rule 8(a) and signed by both Plaintiffs. The orders further required that Lillie Dawson file a motion to proceed *in forma pauperis*, and that Juanita Dawson provide additional financial information on an affidavit enclosed with the order in support of her request to proceed *in forma pauperis*. As of the date of this recommendation, Plaintiffs have failed to comply with the above orders. Although Juanita Dawson filed a second application to proceed *in forma pauperis* on August 23, 2006, she did not complete and return the affidavit form which was sent with a copy of the court's August 11, 2006, order. As with her former motion filed with her complaint, the August 23, 2006, application fails to demonstrate that she is entitled to proceed without the payment of the filing fee, particularly in light of the fact that the complaint alleges that she owns a house located in DeSoto, Texas, which she claims to have purchased from the defendants. Nor has she paid the \$350.00 filing fee.

Findings and Conclusions: Rule 41(b), of the Federal Rules of Civil Procedure, allows a court to dismiss an action *sua sponte* for failure to prosecute or for failure to comply with the federal rules or any court order. *Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir. 1998); *McCullough v. Lynaugh*, 835 F.2d 1126, 1127(5th Cir. 1988). "This authority [under Rule 41(b)] flows from the court's inherent power to control its docket and prevent undue delays in the disposition of pending cases." *Boudwin v. Graystone Ins. Co., Ltd.*, 756 F.2d 399, 401 (5th Cir. 1985) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626 (1962)).

Because Plaintiffs have been given ample opportunity to comply with this Court's deficiency order and order to provide additional financial information, this action should be

dismissed without prejudice for want of prosecution. *See* Fed. R. Civ. 41(b) (an involuntary dismissal “operates as an adjudication on the merits,” unless otherwise specified); *Callip v. Harris County Child Welfare Department*, 757 F.2d 1513, 1519 (5th Cir. 1985) (setting out higher standard for dismissals with prejudice for want of prosecution).

RECOMMENDATION:

For the foregoing reasons, it is recommended that the complaint be DISMISSED without prejudice for want of prosecution pursuant to Federal Rule of Civil Procedure 41(b).

It is further recommended that Plaintiff Juanita Dawson’s motions for leave to proceed *in forma pauperis* and for appointment of counsel be DENIED (Docket #2, #3, and #9).

A copy of this recommendation will be mailed to Plaintiffs.

Signed this 10th day of October, 2006.



WM. F. SANDERSON, JR.
UNITED STATES MAGISTRATE JUDGE

NOTICE

In the event that you wish to object to this recommendation, you are hereby notified that you must file your written objections within ten days after being served with a copy of this recommendation. Pursuant to Douglass v. United Servs. Auto Ass'n, 79 F.3d 1415 (5th Cir. 1996) (en banc), a party's failure to file written objections to these proposed findings of fact and conclusions of law within such ten-day period may bar a *de novo* determination by the district judge of any finding of fact or conclusion of law and shall bar such party, except upon grounds of plain error, from attacking on appeal the unobjected to proposed findings of fact and conclusions of law accepted by the district court.